

HOUSE No. 1555

By Mr. Mariano of Quincy, petition of Ronald Mariano relative to reinsurance agreements. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATIVE TO REINSURANCE AGREEMENTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 175 of the General Laws, as appearing in
2 the 2002 Official Edition, is hereby amended by striking out
3 Section 20, and inserting in place thereof, the following:—

4 Section 20. Any domestic company, except as herein provided,
5 may reinsure in any other company any part or all of any risks
6 assumed by it, and shall file with the annual statement required by
7 section twenty-five and at such other times as the commissioner
8 may require, schedules of all reinsurance.

9 Any contract of reinsurance, other than life, made by any
10 domestic company or by any company incorporated in a foreign
11 country and having its principal office in the commonwealth,
12 ceding more than seventy-five percent of its total outstanding
13 risks, shall be subject to the written approval of the commissioner.
14 No reinsurance contract made by a domestic life company shall
15 cede more than 90% of the risks covered by the reinsurance con-
16 tract without the permission of the commissioner.

17 When reinsurance is so effected the ceding company, other than
18 a life company, shall thereafter be charged on the gross premium
19 basis with an unearned premium liability, and a life company shall
20 be charged thereafter with a reserve liability, both said unearned
21 premium and reserve liability representing the proportion of the
22 obligation retained by it. Reinsurance credits shall be established
23 in accordance with the provisions of Chapter 175, Section 20A.

24 A company ceding reinsurance to a mutual company shall not,
25 unless the contract of reinsurance so provides, become thereby a

26 member of the company accepting such reinsurance or be entitled
27 to any dividend or expiration return of premium or be subject to
28 liability to assessment.

29 A company and any officer or agent thereof effecting or acting
30 in the negotiation of reinsurance in violation of this section shall
31 severally be punished by a fine of five thousand dollars.

1 SECTION 2. Chapter 175 of the General Laws, as appearing in
2 the 2002 Official Edition, is hereby amended by striking out sub-
3 section (4) of section 20A and inserting in place thereof the
4 following:—

5 4. (A) No credit shall be allowed, as an admitted asset or
6 deduction from liability, to any ceding insurer for reinsurance
7 unless the reinsurance contract provides, in substance, that in the
8 event of the insolvency of the ceding insurer, the reinsurance shall
9 be payable under a contract(s) reinsured by the assuming insurer
10 on the basis of claims filed and allowed in the liquidation pro-
11 ceeding, without diminution because of the insolvency of the
12 ceding insurer. Such payments shall be made directly to the
13 ceding insurer or to its domiciliary liquidator except: (1) where
14 the contract of insurance or reinsurance specifically provides
15 another payee of such reinsurance in the event of the insolvency
16 of the ceding insurer, or (2) where the assuming insurer, with the
17 consent of the direct insured(s), has assumed such policy obliga-
18 tions of the ceding insurer as direct obligations of the assuming
19 insurer to the payees under such policies and in substitution for
20 the obligations of the ceding insurer to such payees.

21 (B) Notwithstanding subsection (A), in the event that a life and
22 health insurance guaranty association has made the election to
23 succeed to the rights and obligations of the insolvent insurer under
24 the contract of reinsurance, the reinsurer's liability to pay covered
25 reinsured claims shall continue under the contract of reinsurance,
26 subject to the payment to the reinsurer of the reinsurance pre-
27 miums for such coverage. Payment for such reinsured claims shall
28 only be made by the reinsurer pursuant to the direction of the
29 guaranty association or its designated successor. Any payment
30 made at the direction of the guaranty association or its designated
31 successor by the reinsurer will discharge the reinsurer of all fur-
32 ther liability to any other party for said claim payment.

33 (C) Any reinsurance agreement may provide that the liquidator
34 or receiver or statutory successor of an insolvent ceding insurer
35 shall give written notice of the pendency of a claim against the
36 insolvent ceding insurer on the policy or contract reinsured within
37 a reasonable time after such claim is filed in the insolvency pro-
38 ceeding and during the pendency of such claim the assuming
39 insurer may investigate such claim and interpose, at its own
40 expense, in the proceedings where such claim is to be adjudicated
41 any defense or defenses which it may deem available to the ceding
42 company or its liquidator or receiver or statutory successor. Sub-
43 ject to court approval, the expense thus incurred by the assuming
44 insurer shall be chargeable, against the insolvent ceding insurer as
45 part of the expense of liquidation, to the extent of a proportionate
46 share of the benefit, which may accrue to the ceding insurer solely
47 as a result of the defense undertaken by the assuming insurer.
48 Where two or more assuming insurers are involved in the same
49 claim and a majority in interest elect to interpose a defense(s) to
50 such a claim, the expense shall be apportioned in accordance with
51 the terms of the reinsurance agreement as though such expense
52 had been incurred by the ceding insurer.